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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,168	06/25/2003	Daniel Gregorich	S63.2B-10968-US01	1479

490 7590 03/10/2005

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

SNOW, BRUCE EDWARD

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/606,168

Applicant(s)

GREGORICH, DANIEL

Examiner

Bruce E Snow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-42 is/are pending in the application.
- 4a) Of the above claim(s) 2,3,5,10-16,18,19,21,22,26-32 and 34-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6,9,17,20,23-25 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/17/03; 9/22/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 2-3, 5, 10-16, 18-19, 21-22, 26-32, 34-42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species. Claim 20 has been added back into prosecution having the same limitations as rejected claim 7.

This application contains claims 2-3, 5, 10-16, 18-19, 21-22, 26-32, 34-42 drawn to an invention nonelected with traverse in Paper No. 06112004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Response to Arguments***

Applicant's arguments filed 12/08/04 have been fully considered but they are not persuasive. Applicant's amendment to claim 17, "*at least one first type of connector strut coupled at its first end to a distal turn of a serpentine circumferential band,*" fails to define over Cox. It is the Examiner's position that the distal turn is U-shaped and includes a portion of the straight linking segment 82.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 4, 6, 9, 17, 20, 23-25, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Frantzen (6,083,259).

Referring to at least figure 10, Frantzen teaches a stent comprising a plurality of serpentine circumferential bands 20, each serpentine circumferential band having a proximal end portion, a distal end portion, a plurality of proximal turns at said proximal end portion and a plurality of distal turns at said distal end portion; and

a plurality of connector columns, each connector column located between two adjacent serpentine circumferential bands, each connector column comprising a plurality of connector struts including a first type of connector strut 51 and a second type of connector strut 60, each connector strut coupled at a first end to a serpentine circumferential band and coupled at a second end to another serpentine circumferential

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band; wherein the number of proximal turns in a serpentine circumferential band is a multiple of 3, and wherein the number of connector struts in a connector column is a multiple of 2 (as shown in at least figure 10), and wherein the number of connector struts in a connector column is less than the number of proximal turns in an adjacent serpentine circumferential band.

Note 6:52 et seq. teaching both first and second strut types in each connector column.

The first strut type 51 has greater axial strength and the second type 60 spans a greater circumferential distance.

Claims 17, 20, 23, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Cox (6,461,380).

Referring to at least figure 3, Cox teaches a stent comprising a plurality of serpentine circumferential bands 72, each serpentine circumferential band having a proximal end portion, a distal end portion, a plurality of proximal turns at said proximal end portion and a plurality of distal turns at said distal end portion; and a plurality of connector columns, each connector column located between two adjacent serpentine circumferential bands, each connector column comprising a plurality of connector struts 78, each connector strut coupled at a first end to a serpentine circumferential band and coupled at a second end to another serpentine circumferential band; wherein the number of proximal turns in a serpentine circumferential band is a multiple of 3, and wherein the number of connector struts in a connector column is a multiple of 2, and

wherein the number of connector struts in a connector column is less than the number of proximal turns in an adjacent serpentine circumferential band.

Regarding claim 7, note the connector struts have a first type concave up and a second type concave down.

### ***Conclusion***

Applicant's amendments including claim 20 necessitated the new ground(s) of rejection presented in this Office action. Additionally, it is noted that Frantzen (6,083,259) was submitted by applicant after the first Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (571) 272-4759. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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BRUCE SNOW  
PRIMARY EXAMINER